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Petroleum Monitoring
Agency

Agence de surveillance
du secteur pétrolier

METHOD FOR MEASUREMENT OF CANADIAN OWNERSHIP AND DETERMINATION OF CONTROL UNDER THE NATIONAL ENERGY PROGRAM

April 22, 1981

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Canada



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PREFACE

On October 28, 1980 the Government of Canada presented to Parliament and the people of Canada its National Energy Program (NEP). The program was based on the belief that federal action is needed to:

- assure Canadians control of their energy future through security of supply;
- afford Canadians a meaningful opportunity to participate in the expansion of the petroleum industry; and
- provide a petroleum pricing and revenue sharing regime which is fair to all Canadians.

The NEP introduced a number of major policy initiatives to attain these objectives, and indicated that some would require the measurement of Canadian ownership rates and the determination of Canadian control of firms in the oil and gas business. The government assigned these tasks of measurement and determination to the Petroleum Monitoring Agency (PMA).

The PMA set out a general approach to the tasks it had been assigned in a discussion paper Measurement and Determination for Canadian Ownership and Control, which was released on November 21, 1980. The discussion paper stated that the PMA wished to discuss this approach with the oil and gas industry and other interested parties.

Following release of the discussion paper, the PMA received numerous written and oral submissions. These submissions were studied carefully, after which the PMA reported to the Minister of Energy, Mines and Resources, the Honourable Marc Lalonde, concerning the views that had been submitted.

On February 16, 1981, Mr. Lalonde announced some of the general principles that the federal government had decided on with respect to the measurement of Canadian ownership and determination of Canadian control. This document now reflects the resolution of the remaining principal matters that required consideration.

This document is in two parts. The first part is a brief outline of the principles and concepts that underlie the measurement of Canadian ownership and determination of Canadian control of firms in the oil and gas business. It excludes many important details in order that the reader will have a broad overview of the purposes of the methodology.

The second part is more detailed. It will serve as the basis for the drafting of the enabling legislation and for the promulgation of regulations.

The guidelines that follow constitute, in a number of important respects, a modification of the position set out in the November 21st discussion paper.

In particular, the guidelines will require less administration, on the part of both industry and government, than was contemplated by that discussion paper. It is also believed that the modifications will lead to a more accurate measurement of the degree of Canadian ownership of firms than would have resulted from the proposals in the November 21st discussion paper.

Harold A. Renouf

Chairman

Ottawa
April 22, 1981

EXECUTIVE SUMMARY

1. Applicants

For a variety of specific purposes outlined in the National Energy Program, individuals and business enterprises will require a certificate which sets out both their Canadian ownership rate (COR) and their control status.

The first step in the certification process is to determine whether or not one is a "qualified applicant". Individuals who are Canadian citizens ordinarily resident in Canada or who are permanent residents, as defined, are qualified applicants. Similarly, a Canadian corporation, partnership, or trust, including trusts in respect of pension plans, may apply for a certificate. However, a joint venture may not apply. Instead, the members of a joint venture, to the extent that they qualify in their own right, may apply for their own certificates.

2. Presumptions

A Canadian citizen ordinarily resident in Canada and, in most cases, a permanent resident (within the meaning of the Immigration Act) will be presumed to be Canadian for ownership and control purposes.

Certain financial institutions and intermediaries serve as vehicles for pooling the savings of individual Canadians. These include pension plans, life insurance companies and certain types of so-called "pooled" funds (usually operated by trust companies, mutual fund companies, or life insurance companies). Where these types of vehicles meet specified conditions, including that at least 90% of their assets are held in respect of Canadians, they will be presumed to have a Canadian ownership rate of 100%. A similar provision will apply to passive investors that are at least 90% Canadian. In addition, certain corporations which are generally thought of as being owned exclusively, or almost exclusively, by Canadians, will be presumed to have a COR of 100%. Examples are the Alberta Energy Company Ltd. and the British Columbia Resources Investment Corporation.

In general, a business with total assets of under \$5 million and gross revenues of less than \$10 million will be presumed to have a COR of 100% if it is Canadian controlled and if it is at least 50% owned by individuals with Canadian addresses. These businesses will be eligible to use a short form in applying for a Canadian ownership rate.

3. Measurement of Beneficial Canadian Ownership

Equity -- Formal and Informal

It is expected that the measurement of the COR of the majority of applicants will be based on the beneficial ownership of their formal equity. This will normally involve measuring the extent to which individual Canadians own, for their own benefit, the common shares of a corporate applicant. A partnership or trust will measure the extent of the beneficial Canadian ownership in its capital and income interests.

Where different classes of shares of a corporation exist but their characteristics are common, the shares of the different classes will be combined. Where a class of shares cannot be combined because its characteristics differ from others but that class is insignificant in relation to the total equity of the corporation, it will be excluded. Where two or more classes of shares which are significant cannot be combined, the Canadian ownership rate (COR) of each class will be measured separately. In that event, the COR of the applicant is the weighted average of the classes that have been measured separately, provided a meaningful weighted average can be calculated. If a meaningful weighted average cannot be calculated, the COR of the applicant will be the lowest COR of the various classes of shares being measured. Without this latter provision, there is no assurance that the COR rate of the applicant would actually reflect its true beneficial ownership.

Convertible preferred shares and convertible debt will be taken into account, in specified circumstances, regardless of whether they have an upward or downward effect on an applicant's COR. Other forms of forward equity will also be taken into account, under specified circumstances, but only where they have a downward impact, with the PMA having some discretionary power to deal with these situations.

Where there are different classes of ownership interests in partnerships and trusts, similar rules will apply as in the case of corporations .

Arrangements that are referred to as "informal equity" may also influence the level of benefits that would accrue to Canadians. Indeed, such informal equity may represent more accurately the true beneficial interests in a business enterprise than does traditional formal equity. For instance, royalty agreements or management service contracts may entitle persons other than holders of the formal equity to a fixed percentage of the resource revenues of the applicant. Although it is expected that the COR of most applicants will be determined by the measurement of formal equity only, the informal equity may also be taken into account for purposes of COR calculation in circumstances where informal ownership interests materially dilute the proportion of benefits that would otherwise accrue to the owners of the formal equity.

4. Method of Calculation

In view of the commitment of the federal government to enhance the proportion of the oil and gas industry owned by Canadians, a test of ownership that only takes account of the address of record of registered shareholders, partners or beneficiaries is inadequate from the viewpoint of measuring the bona fide beneficial interest of Canadians in a corporation, partnership or trust. Accordingly, the method of calculation requires an applicant to "see through" the address or nominee of its shareholders, partners or beneficiaries to the underlying individual who holds the true economic interest in the enterprise.

All ownership interests (e.g. common shares) registered with foreign addresses are considered to be foreign in the actual measurement process (except where the applicant can show the contrary). Conversely, all ownership interests of less than \$50,000 in market value with Canadian addresses are presumed to be 100% Canadian. At least one - half of the remaining holdings, starting with the largest holdings, must be measured directly to determine their Canadian content and the unmeasured balance may then be assumed to have the characteristics of the larger measured holdings.

The following illustrates a simple case of a corporation with 1000 shares outstanding. If foreigners own 100 shares and if persons with Canadian addresses, each having holdings worth less than \$50,000, own the

equivalent of 200 shares, the balance is 700 shares. The applicant must measure the Canadian ownership of at least one - half of the remaining 700 shares starting with the largest block and moving downward in descending order of magnitude.

In this example, at least 350 shares must be measured but it is assumed that 400 shares are actually measured. The unmeasured 300 shares are then assumed to have the same ownership characteristics as the 400 measured.

$$COR = \frac{B + (B/A \times R) + S}{T}$$

Where:

A = the number of shares measured directly (in this case A equals 400 shares)

B = the degree of beneficial Canadian ownership in the holdings (i.e. shares) measured

R = the unmeasured shares (300 shares)

S = individual holdings with Canadian addresses with less than \$50,000 in market value (200 shares)

T = total shares outstanding (1000 shares)

Assume that the measured degree of beneficial Canadian ownership in the 400 shares is 320 shares.

$$COR = \frac{320 + (320/400 \times 300) + 200}{1000}$$

$$= \frac{320 + 240 + 200}{1000}$$

$$= 0.76 \text{ (i.e. 76\%)}$$

Often it will be found that the shares that are being measured are beneficially owned by other corporations. Where corporations in a chain are at arm's length, it is necessary to trace back the ownership through two links in the chain only, on the basis of a measurement process that is considerably relaxed. Where corporations in a chain are not at arm's length, the ownership of the block must be traced through the chain to the ownership of the ultimate holding company. In this latter case, if there is an arm's length chain beyond the ultimate holding company, ownership must be traced back through two links in that arm's length chain, as described above.

The more relaxed test for an arm's length chain reflects the fact that the ownership interests that are at arm's length would be expected to have a diluted and therefore less significant impact on the Canadian ownership rate of an applicant than would ownership interests that are not at arm's length.

The need for special treatment of nominee and street share holdings has been recognized. The rules attempt to accommodate problems in tracing the identity of these holdings.

5. Determination of Canadian Control

The control test is as important an element in the federal programs as is the measurement of beneficial Canadian ownership. Thus, certificates issued to applicants will indicate their control status as well as their Canadian ownership.

The test of "control" will, in almost all respects, be based on the definition of control in the Foreign Investment Review Act (FIRA). The test is thus concerned with determining the individual or group of individuals who exercise effective control. Where a determination of control status has been made by the Minister responsible for FIRA, the PMA will accept that determination. In other cases, applicants will be required to submit to the PMA certain information relating to their control status. This information will serve as the basis for control determinations by the PMA.

6. Administration

The PMA will issue certificates on the COR and control status of applicants. These certificates will be required by, for example, an applicant for incentive grants under the Petroleum Incentives Program. Recognizing the lapse in time before the Canadian ownership and control legislation may be passed and the need for firms to have an opportunity to understand the details of new law, it is intended that any application received by December 31, 1981 will be made retroactive to January 1, 1981, provided the applicant will certify that, to the best of its knowledge, there has been no material changes in its control or ownership status in the interval. The date that an application is received by the PMA will serve as the anniversary date for future applications. Thus, the initial COR and control certificate will normally be valid from January 1, 1981 to one year after the date of application. Applications received after January 1, 1982 will be valid for 12 months, subject to

the following qualifications, which apply in respect of this year and all future years. If a certificate holder's COR decreases as a result of actions subject to its control (e.g. sale of new treasury shares to non-Canadians), this information must be forwarded to the PMA and a new certificate will be issued reflecting the new ownership situation. Also, if an applicant knows that its COR has risen, it may supply relevant information and a new certificate will be issued. Where a change in control has occurred, the PMA must be informed and, where appropriate, a new certificate will be issued.

In certain prescribed circumstances the PMA will provide advance rulings to facilitate management decisions, for example, the issue of securities or corporate reorganizations. Also, the PMA plans to issue guidelines and technical bulletins to assist in the interpretation of the regulations.

The accompanying detailed outline is intended to present to industry and to potential new investors technical definitions and sufficient information with respect to the measurement process to allow them to determine their CORs subject to the enactment of the legislation and promulgation of the regulations.

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PART I GLOSSARY OF TERMS

- Arm's length means arm's length as provided in the Income Tax Act.
- Arrangement means a contract, agreement or any other similar understanding between a qualified applicant and any other person, and includes two or more such understandings where, in the opinion of the Petroleum Monitoring Agency (PMA), a principal consequence of their separate existence is the realization of a higher COR by the qualified applicant than would have been realized under one such understanding.
- Canadian control refers to control in fact of a qualified applicant or investor within the meaning of the Foreign Investment Review Act (see pages 42 and 43).
- Canadian ownership rate (COR) means the level of beneficial Canadian ownership as determined under the rules set out in this paper.
- Certificate means a certificate issued by the PMA setting out the Canadian control status and/or the Canadian ownership rate of a qualified applicant.
- Flow - through share corporation means a corporation that has agreed to issue common or preferred shares under the circumstances described in subparagraphs 66.1 (6)(a)(v), 66.2 (5)(a)(v) or 66.4(5)(a)(iii) of the Income Tax Act.

- . Formal equity means in the case of a

- (1) corporation

- (a) shares of a class of common or preferred stock*
including shares of any series of a class of common or preferred stock; and
 - (b) shares described in (a) that are issuable on the conversion of a convertible preferred share or convertible debenture, where the COR would be higher if the shares were issued than if the shares were not issued, subject to:
 - (i) the conversion features meeting the conditions specified in Schedule A; and
 - (ii) the qualification that the COR may not be increased by more than 10 percentage points as a result of this provision; and
 - (c) shares described in (a) that are issuable on the exercise of a warrant, right, option or similar instrument or issuable on the conversion of a convertible preferred share or convertible debenture where the COR would be lower if the shares were issued than if the shares were not issued and where the features relating to the exercise or conversion meet the conditions specified in Schedule A; and

* Certain classes of preferred stock are excluded from formal equity. See page 14, item 4(b).

(d) shares described in (a) that are issuable by a flow-through share corporation pursuant to an agreement described in subparagraphs 66.1(6)(a)(v), 66.2(5)(a)(v) or 66.4(5)(a)(iii) of the Income Tax Act where:

(i) the COR would be higher if the shares were issued than if they were not issued and where it is reasonable to presume the shares will be issued within twenty four months of the date of the agreement, and

(ii) the COR would be lower if the shares were issued than if they were not issued.

(2) partnership or trust

(a) an interest in the net income of the partnership or trust as specified in the partnership or trust agreement; and

(b) an interest in the capital of the partnership or trust

(i) under the terms specified in the partnership or trust agreement, or

(ii) in the event of dissolution or termination; and

(c) any combination of (a) and (b) above; and

(d) a future interest in any of (a), (b) or (c) as a result of a right in the partnership or trust agreement where the exercise of the right would result in a higher COR subject to:

- (i) the conditions specified in Schedule A; and
- (ii) the qualification that the COR may not be increased by more than 10 percentage points; and
- (e) a future interest in any of (a), (b) or (c) as a result of a right in the partnership or trust agreement where the exercise of the right would result in a lower COR and where the features relating to the exercise of the right meet the conditions specified in Schedule A.

- Informal equity means an arrangement, as defined, that permits a person or persons to participate to a material extent in the future revenues or future benefits of the qualified applicant or investor (for example, a royalty agreement under which a person has a share in the resource profits of a qualified applicant).
- Investor means a direct beneficial owner of a class of formal or informal equity and includes a beneficial owner whose class of formal or informal equity is held by a nominee.
- Ownership interest means formal equity or informal equity.
- Passive investor means an investor that owns less than 50% of the voting rights of a qualified applicant and that does not control the qualified applicant, either alone or as a member of a group.
- Person includes an individual, corporation, partnership or trust.

- . Pooled fund means a fund administered, trusteeed or insured by a prescribed institution in which the deposits, savings or assets of two or more investors are comingled in a single investment portfolio.

- . Prescribed institution means
 - (1) a bank chartered under the Bank Act; or
 - (2) a trust company incorporated under the laws of Canada or a province;
or
 - (3) a mutual fund corporation incorporated under the laws of Canada or a province; or
 - (4) a life insurance company incorporated under the laws of Canada or a province; or
 - (5) a credit union incorporated under the laws of a province; or
 - (6) any other financial institution or intermediary prescribed by regulation.

- . Primary investor means a beneficial owner of a class of formal or informal equity of a qualified applicant where the beneficial owner is at arm's length with the qualified applicant.

- . Private corporation means a corporation incorporated under the laws of Canada or a province that is not a public corporation.

- . Public corporation means a corporation incorporated under the laws of Canada or a province the shares of which are publicly traded. For this

purpose, the shares of a corporation are publicly traded only if shares of the corporation are publicly traded in the open market.

. Qualified applicant means

- (1) an individual who is
 - (a) a Canadian citizen ordinarily resident in Canada; or
 - (b) a permanent resident, within the meaning of the Immigration Act, who has been ordinarily resident in Canada for no more than one year after the time when he first became eligible to apply for Canadian citizenship*; or
- (2) a corporation incorporated under the laws of Canada or a province; or
- (3) a partnership subject to the partnership laws of a province; or
- (4) a trust resident in Canada including
 - (a) a pension trust or corporation, as defined in subsection 149(1) of the Income Tax Act, and
 - (b) a trust under a deferred profit sharing plan, as defined in Section 147 of the Income Tax Act; or
- (5) a prescribed institution in respect of a pooled fund; or
- (6) any other legal entity prescribed by regulation.

* A permanent resident who has been ordinarily resident in Canada for more than one year after the time when he first became eligible to apply for Canadian citizenship shall not lose his status as a qualified applicant provided he applies for Canadian citizenship within five years of the coming into force of the enabling legislation.

- Secondary investor means a beneficial owner of a class of formal or informal equity of a primary investor where the beneficial owner is at arm's length with that primary investor.
- Small business means any qualified applicant with total assets of less than \$5,000,000 and annual gross revenues of less than \$10,000,000 including total assets and gross revenues of any persons not at arm's length.
- Special status corporation means a corporation listed in Schedule B.

PART II PRESUMPTIONS AND SPECIAL RULES

1. Qualified Applicants

(1) Individuals

(a) An individual who is a Canadian citizen does not lose his status as a qualified applicant if he has been ordinarily resident outside Canada for less than five consecutive years prior to the date of his application for a certificate.

(b) An individual who is a Canadian citizen does not lose his status as a qualified applicant by reason only of serving in an official or other capacity outside Canada,

(i) as a full-time employee of the Government of Canada or the government of a province or an agency of any such government or of a federal or provincial Crown corporation,

(ii) as a full-time employee engaged in the conduct of a Canadian business or branch, associate or affiliate thereof, at the direction of that Canadian business, where the principal financial reason that the individual is resident outside Canada is to serve in that capacity,

(iii) as a full-time student at a university or other educational institution the credentials of which are accepted by the educational authorities of a majority of the provinces of Canada, if the period of residence outside Canada as such a student is less than 10 consecutive years, or

(iv) as a full-time employee in an international association or organization of which Canada is a member.

(c) An individual who is a Canadian citizen does not lose his status as a qualified applicant if

(i) he was ordinarily resident in Canada when he reached his sixtieth birthday and has been ordinarily resident outside Canada for a period of less than 10 consecutive years prior to the date of his application for a certificate, or

(ii) his Canadian residency status is governed by a reciprocal tax convention.

(2) Self-administered plans

A self-administered registered retirement savings plan, as defined under section 146 of the Income Tax Act, is a qualified applicant if the individual holder of the plan is a qualified applicant.

(3) Corporations

A non-Canadian incorporated subsidiary of a qualified applicant will be presumed to be a qualified applicant where the activities of the subsidiary are conducted primarily in Canada and the subsidiary was incorporated prior to October 29, 1980.

2. Presumptions Concerning 100% Canadian Ownership

The following are presumed to have a COR of 100%, whether as a qualified applicant or an investor:*

- (1) an individual who is a qualified applicant;
- (2) a self-administered registered retirement savings plan, as defined under section 146 of the Income Tax Act, that is registered under that Act, if the individual holder of the plan is a qualified applicant;
- (3) a pension trust or corporation in respect of a fund of a defined contribution pension plan or a trust under a deferred profit sharing plan, in which
 - (a) the plan is registered under the Income Tax Act; and
 - (b) the plan is operated exclusively for the beneficial interests of its members by
 - (i) a trust company incorporated under the laws of Canada or a province, or
 - (ii) trustees, at least three - quarters of whom would qualify for a COR of 100% in their own right as individuals under (1) above, or
 - (iii) an insurance company licensed to do business in Canada, or
 - (iv) any other institution that Revenue Canada recognizes for purposes of pension fund tax registration; and

* Where those listed are qualified applicants, they will have to submit an application to the PMA to show that the facts meet the conditions specified. Where those listed are investors, they need not submit an application to the PMA, but they are subject to audit. (Audit is described on page 52 of this paper.) Note that because a qualified applicant is presumed to have a COR of 100%, it is not necessarily the case that it will be considered to be Canadian controlled.

- (c) at least 90% of the active plan members have Canadian addresses;
and
 - (d) the trustees or insurers and administrators have no reasonable grounds to believe that at least 90% of the plan members would not qualify in their own right as individuals for a COR of 100% under (1) above;
- (4) a pension trust or corporation in respect of a fund of a defined benefit pension plan, in which
- (a) the plan is registered under the Income Tax Act; and
 - (b) the plan is operated exclusively for the beneficial interest of its members by
 - (i) a trust company incorporated under the laws of Canada or a province, or
 - (ii) trustees, at least three - quarters of whom would qualify for a COR of 100% in their own right as individuals under (1) above, or
 - (iii) an insurance company licenced to do business in Canada, or
 - (iv) any other institution that Revenue Canada recognizes for purposes of pension fund tax registration; and
 - (c) the plan has at least 50 active members; and
 - (d) at least 90% of the active plan members have Canadian addresses;
and
 - (e) the trustees or insurers and administrators have no reasonable grounds to believe that at least 90% of the plan members would not qualify in their own right for a COR of 100% under (1) above;*

* For the COR of any other pension plan, see Schedule K, page 87

- (5) a life insurance company incorporated under the laws of Canada or a province in respect only of its general fund for life and annuity business in Canada, where
 - (a) the company meets the conditions specified in Schedule C; and
 - (b) the company gives an undertaking that benefits derived from the National Energy Program will accrue exclusively to its Canadian policyholders as specified in Schedule C;

- (6) a prescribed institution on behalf of a pooled fund in respect of which the management has reasonable grounds to believe that at least 90% of the value of the assets in the fund, excluding assets held on behalf of funds of pension plans and deferred profit sharing plans that are presumed to have a COR of 100% pursuant to (3) and (4) above, are held beneficially, whether directly or indirectly, on behalf of individuals or self-administered registered retirement savings plans pursuant to (1) and (2) above;

- (7) a corporation that is a co-operative corporation organized under the laws of Canada or a province in respect of which
 - (a) at least 90% of the members and at least 90% of the shareholders have Canadian addresses; and
 - (b) at least 90% of the shares in the co-operative corporation are held by shareholders with Canadian addresses; and
 - (c) the officers of the corporation have no reasonable grounds to believe that at least 90% of the members and at least 90% of the shareholders would not qualify for a COR of 100% in their own right as individuals under (1) above; and

- (d) the officers of the corporation have no reasonable grounds to believe that at least 90% of the shares are not held by shareholders who would qualify for a COR of 100% in their own right as individuals under (1) above; and

(8) a special status corporation, as defined.

3. Presumptions Concerning Canadian Ownership of Investors Only

- (1) A Canadian charitable organization registered under the Income Tax Act will be presumed to have a COR of 100%.
- (2) A passive investor with a COR of at least 90% will be deemed to have a COR of 100% provided that
 - (a) for a passive investor owning less than 10% of the ownership interest in a qualified applicant, the COR of the passive investor is measured as if it were a primary investor (see section 10 beginning on page 27); and
 - (b) for a passive investor owning 10% or more of the ownership interest in a qualified applicant, the COR of the passive investor is measured as if it were a qualified applicant (see section 9 beginning on page 20).

4. COR Exclusions

The following are excluded from the consideration of COR:

- (a) a warrant, right, option or other similar instrument, convertible preferred share or convertible debenture, except as provided for in the definition of formal equity (see pages 2 and 3), and

(b) preferred shares except where

- (i) they are convertible into common shares, or
- (ii) they participate in the profits of the issuer beyond the fixed dividend rate, or
- (iii) they are redeemable at a rate beyond their par value or redemption value, or
- (iv) the fixed dividend rate permits the shareholder to participate to a disproportionate extent in the future revenues of the corporation.

5. Special Rules Relating to Partnerships

A certificate issued to a partnership shall be effective for any individual partner of that partnership only in respect of the activities carried on by that partnership. For other oil and gas activities carried on by an individual partner separately from its participation in that partnership, a certificate issued directly to that individual partner will be required.*

* The possibility that partners may, in certain limited circumstances, apply separately for incentives under the Petroleum Incentives Program is being considered.

6. Flow-through Share Corporations

Notwithstanding any other provision in this paper, it is the flow-through share corporation, and not the shareholders, that is to apply for and receive a COR certificate.

PART III CALCULATION OF CANADIAN OWNERSHIP RATE (COR)

Formal equity and informal equity are the two types of ownership interest that may influence the COR of an applicant. In all applications, a qualified applicant will have to measure its formal equity. The methodology for doing this is set out beginning on page 20. In some cases, the qualified applicant may have unusually large liabilities in the form of informal equity. Informal equity is referred to briefly below and then discussed in more detail in Part IV.

7. General Considerations in Respect of Informal Equity

- (1) Informal equity may be taken into account in measuring the COR of a qualified applicant where the distribution of the revenues or benefits between Canadians and non-Canadians as a result of the existence of the informal equity differs materially from the distribution that would derive from measuring the distribution of the ownership of the formal equity only.
- (2) In the circumstances described in (1), in particular where the amount of the informal equity is substantial in relation to the formal equity, and where it is not practicable to relate the COR of the qualified applicant based on its formal equity to the COR based on informal equity and to do a meaningful weighted average of the two, then the COR of the qualified applicant shall be the lower of the CORs based on the formal equity and the informal equity.

8. Working Assumptions in Respect of Formal Equity

(1) Treatment of separate classes of formal equity.

- (a) Where two or more classes of formal equity of a qualified applicant or investor can reasonably be combined, they shall be combined for the purpose of measuring the COR of the applicant or investor.
- (b) Subject to (a), any class of formal equity that is insignificant in relation to the total formal equity of a qualified applicant that is being measured, or in relation to the total formal equity of an investor in a qualified applicant that is being measured, will be excluded from the COR measurement.
- (c) In determining whether the conditions for paragraph (a) exist, voting rights shall be ignored.
- (d) Where two or more classes of formal equity are combined pursuant to (a) above, they are jointly considered to constitute a separate class of formal equity for purposes of the calculation process set out in section 9 below.
- (e) A class of formal equity that is constrained to Canadian ownership but otherwise substantially similar to any other class of formal equity will be combined with the other class for the purpose of measuring COR.
- (f) Where more than one class of formal equity remains after the inclusions and exclusions in (a) to (e) have been effected, the COR of each remaining class of formal equity is to be measured separately, and the COR of the qualified applicant shall be the weighted average of the CORs of the remaining classes of formal equity where it is practicable to calculate a weighted average.

- (g) Where it is not practicable to calculate the weighted average, the COR of the qualified applicant is the lowest COR of the measured classes.

(2) A large holding is:

- (a) in the case of a public corporation, partnership or trust, any holding with a Canadian address equal to one-half of 1% or more of any separate class of formal equity in that corporation, partnership or trust, subject to (3) below; or
- (b) in the case of a prescribed institution in respect of a pooled fund, any holding with a Canadian address equal in value to one-half of 1% or more of the total market value of the assets in the fund, subject to (3) below.

(3) A small holding is:

- (a) in the case of a public corporation, partnership or trust, any holding with a Canadian address having less than \$50,000 in market value of any separate class of formal equity in that corporation, partnership or trust; or
- (b) in the case of a prescribed institution in respect of a pooled fund having at least 500 unit-holders or depositors, a holding with a Canadian address having less than \$50,000 in market value.

- (4) In determining the market value of the holdings in a public corporation, partnership, trust or prescribed institution in respect of a pooled fund, for purposes of (2) and (3), reference must be made to Schedule D.

- (5) A small holding referred to in (3) is deemed to have a COR of 100%.
- (6) An intermediate holding is a holding of a separate class of formal equity, with a Canadian address, that is smaller than a large holding as defined in (2) and greater than a small holding as defined in (3).
- (7) Unidentified ownership interests:
- (a) An intermediate holding in a public corporation, partnership, trust or prescribed institution in respect of a pooled fund, that is not identified, is deemed to have a COR of 50% subject to the following provisions:
 - (i) it does not have a foreign address; and
 - (ii) the holding is being measured pursuant to the calculation method in section 9 below; and
 - (iii) a reasonable effort has been made to determine the beneficial ownership of that holding.
 - (b) An intermediate holding with a Canadian address that is being measured pursuant to the calculation method in section 9 below is deemed to have a COR of 0% if no reasonable effort has been made to identify its beneficial owner.
 - (c) A large holding that is not identified is deemed to have a COR of 0%.
 - (d) Special provisions apply to shares of public corporations held in 'street name' and in nominee form. These special rules are described after the methodology that follows.

9. Calculation Methodology -- Basic System

(1) The basic system below sets out the general methodology to be followed by all qualified applicants applying for a COR.

(2) The COR of any class of formal equity (including a class of formal equity as defined in 8(1)(d), page 17) is computed according to a formula based on the sequence of steps that follows. (An arithmetic example is included with each step for ease of understanding.)

(a) Note the total holdings in respect of each class of formal equity that is to be measured separately. The total holdings are represented by the symbol "T" and in this example they equal 1,000,000 units (say, common shares).

$T = 1,000,000$ units.

(b) Determine the number of holdings with foreign addresses "F".

$F = 100,000$ units.

(Note that foreign holdings that are beneficially owned by Canadians need not be included in "F".)

(c) Determine the total number of small holdings "S"

$S = 200,000$ units.*

(d) Deduct from the total holdings "T" all holdings with foreign addresses "F" and small holdings "S", which gives a pool of remaining Canadian addressed holdings "P".

* Note that the applicant is not required to follow step (c).

$$\begin{aligned} P &= T - (F + S) \\ &= 1,000,000 - (100,000 + 200,000) \\ &= 700,000 \text{ units. } * \end{aligned}$$

(e) The measurement of beneficial Canadian ownership requires the qualified applicant to identify and measure at least 50% of "P" as follows:

(i) identify and measure all large holdings (as defined in 8(2) above, page 18). In this example, these large holdings are:

| <u>Large holdings</u> | <u>Number of units</u> |
|-----------------------|------------------------|
| Pension fund "C" | 200,000 |
| Corporation "D" | 60,000 |
| Corporation "E" | 50,000 |
| Individual "I" | <u>20,000</u> |
| Total | 330,000 |

If the large holdings equal at least 50% of "P", it is not necessary to identify and measure additional holdings.

(ii) measure sufficient intermediate holdings (as defined in 8(6) above, page 19) in the event that the large holdings do not

* Note that if (c) is ignored, "P" would equal 900,000 units. See Schedule E for the complete calculation under this method.

equal at least 50% of the holdings in "P" (50% of "P" is 50% x 700,000 units = 350,000 units). Such intermediate holdings must be ranked in descending order of magnitude.

| <u>Intermediate holdings</u> | <u>Number of units</u> |
|-------------------------------|------------------------|
| Trust company equity fund "J" | 4,500 |
| Corporation "K" | 4,000 |
| Individual "L" | 4,000 |
| Individual "M" | 4,000 |
| Insurance company fund "N" | <u>4,000</u> |
| Total | 20,500 |

A = the aggregate of holdings selected. In this case, "A" is made up of the 330,000 units in (i) plus the 20,500 units referred to immediately above and equals 350,500 units, thus exceeding by 500 units the minimum requirement that 50% of the holdings be selected.*

(iii) In measuring the COR of the various holdings referred to in (ii) and (iii) above, consideration must be given to the methodology set out in sections 10 and 11 below.

(f) The holdings not selected for measurement directly are determined by deducting "A" from "P" giving the remainder "R"

$$\begin{aligned} R &= P - A \\ &= 700,000 - 350,500 \\ &= 349,500 \text{ units.} \end{aligned}$$

* The qualified applicant may measure more than 50% of the holdings in "P" provided that the holdings are measured in descending order of magnitude.

- (g) The measurement of beneficial Canadian ownership is continued by multiplying the COR of each selected holding in (e) above times the number of units of each holding being measured. (This implies that each of these holdings has been traced to its ultimate beneficial owners subject to the provisions in section 13 below.)

| <u>Holder</u> | <u>Number of units</u> | | <u>COR*</u> <u>of holding</u> | <u>Beneficial Canadian ownership</u> |
|--------------------------------|----------------------------|---|----------------------------------|--|
| Pension fund "C" | 200,000 | x | 1.00 | 200,000 |
| Corporation "D" | 60,000 | x | 0.75 | 45,000 |
| Corporation "E" (unidentified) | 50,000 | x | 0.00 | - |
| Individual "I" | 20,000 | x | 1.00 | 20,000 |
| Trust company equity fund "J" | 4,500 | x | 1.00 | 4,500 |
| Corporation "K" (unidentified) | 4,000 | x | 0.50 | 2,000 |
| Individual "L" | 4,000 | x | 0.00 | - |
| Individual "M" | 4,000 | x | 1.00 | 4,000 |
| Insurance company | | | | |
| fund "N" | <u>4,000</u> | x | 1.00 | <u>4,000</u> |
| Total | <u>350,500</u> | | | <u>279,500</u> |
| | "A" | | | "B" |

- (h) The aggregate beneficial Canadian ownership of the 350,500 units in "A" is 279,500 units. The 279,500 units constitute "B".

* Assumed for this illustration

- (i) The COR of this qualified applicant would then be

$$\begin{aligned}\text{COR} &= \frac{B + (B/A \times R) + S}{T} \\ &= \frac{279,500 + (279,500/350,500 \times 349,500) + 200,000}{1,000,000} \\ &= 76 \%*\end{aligned}$$

- (3) In the case of a public corporation

- (a) the calculation methodology in (2) above is to be followed in respect of each class of shares or of other formal equity as provided for in 8(1) above, and
- (b) an additional five percentage points will be added to the COR of the qualified applicant provided,
 - (i) its beneficial Canadian ownership is at least 50%, and
 - (ii) it is Canadian controlled, and
 - (iii) no use has been made of the provisions of the 100% COR deeming rule pursuant to 10(1)(c), (d) and (e) (see pages 27 and 28) by a secondary investor which owns 5% or more of the ownership interest of the qualified applicant.

- (4) In the case of a partnership or trust, the calculation methodology in (2) above is to be followed in respect of both the income and capital interests of the partnership or trust.

* COR will be determined to three decimal points and rounded to two decimal points. (For instance, a COR of 66.4% is rounded to 66%; a COR of 66.5% is rounded to 67%.)

- (5) A private corporation, as defined, that is not a small business, will determine its COR by:
- (a) determining the status of all its individual and other shareholders for COR purposes; and
 - (b) multiplying for each separate class of formal equity, the COR of each of its shareholders times the number of shares it holds; and
 - (c) summing the beneficial Canadian ownership of the shareholders calculated in (b); and
 - (d) dividing this sum by the total shares outstanding for that class.
- (6) A small business will have a COR of 100% where the following conditions are met:
- (a) the business is Canadian controlled, as defined; and
 - (b) if its shares are listed for trading on a stock exchange, they are listed on a Canadian exchange only; and
 - (c) at least 50% of the shares outstanding have Canadian addresses.

Figure 1
ARM'S LENGTH CHAIN

RELEVANT FACTS

DIRECTIONS FOR MEASUREMENT OF COR

C is a secondary investor
in A by reason of its holdings
in B.



- C applies FIRA
control test.

less than 50%

B is primary investor
in A by reason of its holdings
in A.



- B is measured using the
5%/25% "basic system" referred
to in paragraph 10(1)(b) on
page 27.

less than 50%

Applicant -



- A is measured using the 1/2 of
1%/50% "basic system" referred
to starting on page 20.

Notes to Figure 1:

1. In circumstances where B and/or C have already determined their CORs, see (2), pg.29.
2. See Schedule F for a simple illustration of a reciprocal shareholding relationship.
3. Note that the circumstances in which the FIRA control test may be applied at the level of the secondary investor change after 1981. See pages 27 and 28.
4. For a more detailed illustration of an arm's length chain, with illustrative calculation, see Schedule G.

10. The Arm's Length Chain Measurement Concept

- (1) The degree of beneficial Canadian ownership of an arm's length investor in a qualified applicant that is a corporation, partnership or trust is determined as follows:
 - (a) determine whether it is a primary or secondary investor in the qualified applicant as illustrated in Figure 1 on the page opposite;
 - (b) the COR of a primary level investor is calculated for this purpose, by applying the basic system set out above except that in implementing 9(2)(e) (see pages 21 and 22)
 - (i) the investor has only to measure at least 25% (rather than 50%) of the holdings ranked in descending order of magnitude, and
 - (ii) include in (i) all holdings equal to or greater than 5% (rather than 0.5%);
 - (c) in respect of applications received in 1981, the COR of a secondary investor in a qualified applicant is
 - (i) 100% provided it is Canadian controlled within the meaning of that term under the Foreign Investment Review Act, (i.e. not a "non-eligible person"), or
 - (ii) if it is not Canadian controlled, identical to the COR that would apply to it as a primary investor;
 - (d) for applications received in calendar year 1982, the method for determining the COR of a secondary investor will depend in part on the magnitude of the secondary investor's indirect investment in the qualified applicant through the primary investor;
 - (i) in 1982, if the secondary investor

- has an indirect ownership interest in the qualified applicant (through the primary investor) of 20% or less, and
 - is Canadian controlled within the meaning of the Foreign Investment Review Act,
its COR is 100%;
- (11) in 1982, if the two conditions specified in (d)(i) do not apply, the COR of the secondary investor is identical to the COR that would apply to it as a primary investor;
- (e) for applications received in calendar year 1983, the COR of a secondary investor will be determined as in (d), except that the figure of 20% in subparagraph (i) is replaced by 15%; for applications received in calendar year 1984 and subsequently, the COR of a secondary investor will be determined as in (d), except that the figure of 20% in subparagraph (i) is replaced by 10%;
- (f) Where a secondary investor considers it has a COR of 100% under (c)(i), (d)(i) or (e) above, by reason of being Canadian controlled, a letter to that effect must be included in the application of the qualified applicant signed by a responsible officer, trustee or partner of the secondary investor, and its letter is relevant for that purpose only.

- (2) Notwithstanding the provisions of (1), where a primary or secondary investor has also been a qualified applicant in the same calendar year, its COR as an investor will be the same as its COR as a qualified applicant (less, in the case of a public corporation, the five percentage points that may have been added to the qualified applicant's COR pursuant to 9(3)). Where a secondary investor has also been a primary investor in the same calendar year, but has not been a qualified applicant, its COR as a secondary investor will be the same as its COR as a primary investor.
- (3) Except in the event that the procedure established in 12(3) (page 34) is followed, a nominee holding is not considered to be an investor for the purposes of (1).
- (4) Where the PMA has reasonable grounds to believe that a qualified applicant and/or its investors have arranged or reorganized their affairs as a result of the provisions of this section, for reasons wholly or partly related to a desire to obtain a higher COR than would otherwise be obtainable, it may deem the relationships between the applicants and investors not to be arm's length relationships for the purpose of COR measurement.

11. The Non-Arm's Length Chain Measurement Concept

Where the qualified applicant (called "A") is not at arm's length with an investor (called "B"), the method for determining the COR of the qualified applicant "A" will be as follows (see also Figure 2, on page 31):

- (1) the investor "B" calculates its COR according to the principles set out for the basic system (see 9(2) on page 20) and the COR of the qualified applicant "A" reflects fully the beneficial Canadian interest of "B" in "A"; (For example, if "B" with a COR of 60% owns 70% of "A", then "B" contributes 42 percentage points of beneficial Canadian ownership to the COR of "A".)
- (2) assuming "B" is itself not at arm's length with investor "C", then the COR for "B" is calculated in the same manner as that of qualified applicant "A" (i.e. to reflect fully "C"s interest in "B");
- (3) the procedures set out in (1) and (2) are continued throughout the non-arm's length chain until the last non-arm's length relationship in that chain is reached, (For example, suppose the non-arm's length chain is broken at the next level; that is "D" is not at arm's length with "C", but there is no other company in the chain beyond "D" in a non-arm's length relationship with "D".)

Figure 2

NON-ARM'S LENGTH CHAIN

RELEVANT FACTS

DIRECTIONS FOR MEASUREMENT OF COR

D is a non-arm's length investor in C and is the last of the non-arm's length entities.



- D is measured using the 1/2 of 1%/50% "basic system" referred to starting on page 20.

C is owned 100% by D and is therefore in a non-arm's length relationship with D.



- C has the same COR as D.

B is owned 80% by C and is therefore in a non-arm's length relationship with C.



- B has a COR equaling 80% of the COR of C, plus the beneficial Canadian ownership of the remaining 20% ownership of B.

Applicant is owned 70% by B and is therefore in a non-arm's length relationship with B.



- A has a COR equaling 70% of the COR of B, plus the beneficial Canadian ownership of the remaining 30% ownership of A.

Note to Figure 2:

(1) See Schedules H and I for more complex situations.

(4) the last of the non-arm's length entities in the non-arm's length chain (i.e. "D") has its COR measured on the basis of the basic system referred to in 9(2) above, on page 20, as if "D" were the applicant, and takes into account the arm's length chain measurement procedure referred to in section 10 (see page 27) where relevant.

12. Nominee Holdings

(1) This section deals with ownership interests held through a nominee, such as a prescribed institution, investment dealer, bare trustee, legal representative, agent or any other intermediary. A qualified applicant or investor has the choice of following the procedures outlined in either (2) or (3) below in identifying and measuring the beneficial ownership of a nominee holding. (Section 13 below discusses street shares in connection with investment dealers.)

(2) With respect to each holding that is a nominee holding:

(a) if the nominee holding meets the test of a small holding, and has a Canadian address, it will receive a COR of 100%;

(b) if the nominee holding meets the test of a large or intermediate holding then the following steps are required to be taken by the applicant or investor in order to "look-through" the nominee;

(i) obtain from the nominee the mix of specific holdings making up the nominee holding in the ownership register of the applicant or investor, comprised of

- any holdings having foreign addresses;
- any large holdings;
- any small holdings;
- any intermediate holdings; and
- any "street holdings" .

(ii) obtain from the nominee the COR of any holding referred to in (i) that is needed to meet the requirements of sections 9, 10 and 11 above.

- (3) As an alternative to (2), the total holdings in each nominee account may be treated as a single holding, in which case the COR of that single holding must be determined by the nominee in the same manner as a qualified applicant as specified in the calculation methodology beginning on page 20. (This will require the qualified applicant to inform the nominee what constitutes a large holding, i.e. what constitutes one half of 1% of the holdings of the qualified applicant, and the number of shares equivalent to a market value of less than \$50,000.)

13. Unidentified Street Shares

- (1) Where a qualified applicant follows the method set out in 12 (2), it will receive from various nominees including investment dealers, information concerning the citizenship and residence of the owners of specific holdings (but not the names of the owners). To the extent that investment dealers are unable to identify the beneficial ownership of street shares held in their name or in the names of other dealers, the method for calculating the applicant's COR may be modified as follows.
- (2) If the aggregate of unidentified street shares in the names of all investments dealers does not exceed 5% of that class of shares outstanding, the unidentified shares may be excluded entirely from the total holdings of the class of shares to be measured. As a result, they will not in any way be reflected in the COR of the applicant.
- (3) To the extent that the unidentified street shares exceed 5% of the class of shares outstanding, the unidentified shares in excess of the 5 percentage points receive a COR of 0% subject to (4) below.
- (4) During the period ending on December 31, 1985, a COR of 50% will apply in respect of those unidentified street shares held by investment dealers that exceed the 5% figure referred to in (3) above up to a ceiling set out in (5) below.

(5) For calendar year 1981, a qualified applicant will be entitled to apply a COR of 50% to all unidentified street shares held by investment dealers that are in excess of 5% as determined in (3), up to a ceiling that is the lesser of:

(a) the actual number of unidentified street shares held by investment dealers, less an amount equal to 5% of the shares outstanding of the class of shares being measured; or

(b) 15% of the shares outstanding of the class being measured.

The ceiling established for 1981 constitutes the "base year" figure for the applicant.

(6) The ceiling for unidentified street shares that are entitled to a COR of 50% is reduced in each year subsequent to 1981 by an amount equal to the difference between the base year figure divided by five. For example, if the base year figure is 15% the ceiling for 1982 is 12% (15% divided by 5 = 3%; 15% - 3% = 12%); for 1983 it is 9% and so on, gradually reducing to zero. If the base year figure is 10%, for 1982 the ceiling is 8% (10% divided by 5 = 2%; 10% - 2% = 8%) etc.

- (7) The COR formula may thus be adjusted during the first 5 years of the COR program as follows:

$$\text{COR} = \frac{B + (B/A \times (R - U)) + S + 50\% (U)}{T}$$

Where U = unidentified street shares entitled to a 50% COR

Note: T does not include the first 5 percentage points of unidentified street shares that were referred to in (2). Thus, these 5 percentage points are not included in either the numerator or the denominator of the formula. (See Schedule J for some numerical illustrations.)

14. Investment Dealers

This section applies to an investment dealer registered pursuant to the securities law of any province that is a member of a recognized Canadian Stock Exchange or a member of the Investment Dealers' Association of Canada.

(1) Primary and secondary distribution and private placements

In the course of a primary or secondary distribution of common shares, convertible preferred shares or convertible debentures, where the investment dealer is acting as a principal, the holding of applicable securities of a corporation by that investment dealer for up to a maximum of 60 days would not affect the COR of that qualified applicant.

(a) In the case where a prospectus has been filed with a recognized Canadian securities commission the 60 days will run from the date of the final prospectus. A copy of this prospectus must be deposited with the PMA within the prescribed 60-day period.

(b) Where a prospectus has been issued pursuant to a distribution outside the jurisdiction of a recognized securities commission, the 60 days will run from the date of the formal signing between the qualified applicant and its underwriters. A copy of this prospectus must be deposited with the PMA within the prescribed 60-day period.

(c) In the case of a secondary distribution of common shares, where an investment dealer is acting as a principal and the issuance of a prospectus is not required, the investment dealer may hold these shares for a maximum of 60 days without affecting the COR of the applicant. The 60 days shall run from the date, as certified by the legal counsel of the investment dealer, that the securities were purchased. The certificate of counsel will specify that the securities were underwritten with a view to immediate redistribution.

(d) In the course of a private placement where an investment dealer is acting as an agent, his participation in the transaction has no effect on the COR of the applicant.

(e) Where a secondary distribution or private placement described in (c) and (d) above exceeds 10% of the outstanding shares of the qualified applicant, it shall so notify the PMA.

(2) Market making

(a) Where shares or applicable convertible securities of a qualified applicant are beneficially owned by an investment dealer for its own account, they will be measured in the same way as any other holding of the same size, subject to (b) below.

(b) If an investment dealer acts in the capacity of a registered trader, as defined by the Toronto Stock Exchange, or as a market maker, as defined by the Montreal Stock Exchange, special rules will apply. See Schedule L.

PART IV INFORMAL EQUITY

- (1) It is the intention and expectation of the PMA to measure the COR of a qualified applicant on the basis of formal equity. However, where there exists certain arrangements, referred to as "informal equity", the provisions set out in section 7 (page 16) will apply. In applying those provisions, the following considerations will be taken into account.
- (2) Where informal equity arrangements severely restrict the expected participation of the formal equity holders in the residual benefits, then the PMA will consider an adjustment to the COR or will deem a separate class of shares to exist to which a separate COR will apply.
- (3) A qualified applicant must identify all arrangements that constitute informal equity. Situations that may call for an examination of informal equity may be occasioned where a substantial portion of the value of the qualified applicant, after having regard for normal operating and administrative costs, resides either potentially or in fact with persons other than the formal equity holders. Where, for example, a high percentage gross royalty overrides the production of a qualified applicant, the PMA will wish to examine the situation to ensure that the benefits deriving from the qualified applicant's COR are not, in effect, being transferred to other persons.

- (4) The PMA will evaluate the impact of informal equity on COR determinations on a case by case basis and will consider applications according to their individual merits.
- (5) Informal equity will not be taken into account if a qualified applicant can satisfy the PMA that:
- (a) the arrangement was not entered into in order to circumvent the objectives that underlie the measurement of the Canadian ownership rate, and
 - (b) the interest in the informal equity does not result in a substantial dilution in the COR as calculated on the basis of formal equity.
- (6) In limited circumstances, particularly related to anti-avoidance, the considerations set out above in respect of qualified applicants may also be taken into account in respect of investors.
- (7) Although the PMA has attempted to define with more precision what would constitute informal equity, the range of possible informal equity arrangements is so broad as to prevent a practical, universal definition. A measure based, for example, on a share of resource profits is not relevant for a firm engaged in the preliminary stages of the exploration and development cycle since, by definition, its resource profits may be relatively small. Therefore, in order to provide industry with the PMA's interpretation of the principles stated above, the PMA will publish interpretation bulletins or guidelines as soon as is practicable after proclamation of the enabling legislation.

PART V DETERMINATION OF CANADIAN CONTROL

15. For the purposes of this part,

(1) a non-eligible person has the same meaning as that term has in the Foreign Investment Review Act and regulations except for the qualification set out in the footnote to paragraph (1)(b) of the definition of a qualified applicant (see page 6),

(2) the provisions of the Foreign Investment Review Act that are relevant to the determination of the control status of a qualified applicant or investor shall apply with such modification as the circumstances require.

16. In general, under the Foreign Investment Review Act, a corporation is Canadian controlled unless it is controlled in any manner that results in control in fact, whether directly through the ownership of shares or indirectly through a trust, a contract, the ownership of shares of any other corporation or otherwise by a non-eligible person or a group of persons any member of which is a non-eligible person.*

17. For the purpose of determining Canadian control,

(1) a partnership shall be deemed to be a corporation of which the beneficial holders of ownership interests in the partnership are shareholders; and,

* Under the Foreign Investment Review Act, there are some factual situations in which this general rule does not apply.

(2) a trust shall be deemed to be a corporation, and the persons having a beneficial interest in the trust shall be deemed to be the shareholders of a corporation, and the trustees the members of the board of directors.

18. (1) A corporation holding a current and valid opinion of the Minister under subsection 4(1) of the Foreign Investment Review Act that it is not a non-eligible person will be deemed to be Canadian controlled by the PMA.

(2) In the event the Minister responsible for the administration of the Foreign Investment Review Act concludes that a person is non-eligible subsequent to a determination to the contrary by the PMA, the Minister's decision shall govern the PMA effective from the date the Minister so advises the applicant.

19. The PMA will publish a guide setting out the principal factors that a qualified applicant or investor should take into account in determining whether or not it is Canadian controlled.

PART VI ADMINISTRATION

20. Application for a Certificate

A qualified applicant may apply for a certificate at any time after the coming into force of the enabling legislation by submitting an application in the form and manner and containing the information specified in Part VII.

21. Issuance of a Certificate of Canadian Ownership and Control

(1) Within 90 days of receipt of a complete application by a qualified applicant, the PMA will

- (a) issue a certificate to the applicant on either its Canadian ownership rate or control status, or both; or
- (b) notify the applicant in writing that, on the basis of the information submitted, it is unable to make a determination of the Canadian ownership rate or control status of the qualified applicant and request further information it considers necessary to make such determination.

(2) If further information is requested pursuant to (1)(b),

- (a) the 90-day time period ceases to run from the date the PMA notifies the applicant and the remainder of the 90-day period resumes on the date the requested information is received by the PMA, and
- (b) after receipt of the requested information by the PMA, and subject to (3), a certificate must be issued to the qualified applicant within the overall 90-day limit.

- (3) If the PMA is unable to make a determination of the Canadian ownership rate or control status of the qualified applicant after receipt of the information requested in (1)(b), it may, as often as is required, request such supplementary information as it considers necessary and the time limit within which the PMA must issue a certificate after receipt of any requested supplementary information is the greater of
- (a) the time period referred to in paragraph 2 (a), or
 - (b) 30 days.

- (4) For all applications received within 180 days of the enabling legislation, the PMA shall have the discretion to exceed the above time constraint in the event of an undue administrative burden.

22. Contents of a Certificate

A certificate issued by the Agency will contain:

- (1) the name and address of the qualified applicant to which it is issued; and
- (2) the Canadian ownership rate or control status of the qualified applicant, or both; and
- (3) where applicable, a statement that the qualified applicant is exempt from tax upon its taxable income under Part I of the Income Tax Act; and,
- (4) where applicable, the Canadian ownership rate of the qualified applicant attributable to primary or secondary investors exempt from tax upon their taxable income under Part I of the Income Tax Act; and

- (5) where the Canadian ownership rate or the control status referred to in (2) is different than that determined by the qualified applicant, the reasons for such variation in summary form.

23. Duration of a Certificate

- (1) A certificate will be effective from January 1, 1981 provided that:
- (a) the application is received before December 31, 1981; and
 - (b) the qualified applicant can state to the best of its knowledge that during the period from January 1, 1981 to the date of application, there have been no material events which would have significantly altered its ownership rate or control status.
- (2) Notwithstanding the retroactive provision for 1981, the effective date of termination of the certificate will be one year from the date of receipt of the application by the PMA.
- (3) For all applications received on January 1, 1982 or thereafter, the certificate will be effective as of the date of receipt of the application and shall be valid, subject to sections 24 and 25 below, for a period of 12 months from the date of receipt of the application at which time it lapses.

24. Material Variation

- (1) Where the control status of a holder of a certificate has changed or where, as a result of a transaction or series of transactions in

which the holder of a certificate has participated, either directly or indirectly, its Canadian ownership rate has decreased by more than 1 percentage point, it shall forthwith give notice in writing to the PMA, which shall issue a revised certificate.

- (2) Notwithstanding 23(2) and (3) above, the effective date of the revised certificate shall be the date the change of control occurred or the date the ownership rate decreased by more than 1 percentage point.

25. Revised Certificate

A holder of a certificate may apply for a revised certificate at any time where, in its opinion, its Canadian ownership rate has increased or it has become Canadian controlled. The revised certificate shall be effective until the expiry date of the certificate previously in effect.

26. Advance Rulings

- (1) The PMA may provide advance rulings on any matter relating to the interpretation and application of the rules respecting the measurement of Canadian ownership rates or the determination of control.

- (2) Advance rulings will be given only with respect to transactions which are seriously contemplated.

- (3) An advance ruling will apply only to the specific transaction described in the application. Where the transaction is not completed in the manner specified in the application or where there is a change in the facts upon which the advance ruling is based, the ruling will no longer apply.
- (4) An advance ruling is of no effect where there is failure to disclose or misrepresentation of information material to the ruling.
- (5) Where there is a change in the law upon which the ruling is based, the ruling ceases to have effect from the date of the change in the law.

27. Guidelines

The PMA will publish from time to time guidelines and bulletins with respect to the interpretation, application and administration of the rules governing Canadian ownership rates and control status.

PART VII DOCUMENTATION AND INFORMATION

28. Documentation Required

- (1) Subject to (2) below, an application for a certificate shall be submitted by sending to the PMA a completed application, including information, such as:
- (a) audited financial statements as of the qualified applicant's latest fiscal year end, where ordinarily prepared; otherwise a set of financial statements is to be submitted complying with the presentation standards as set out by the Canadian Institute of Chartered Accountants in its "Handbook";
 - (b) if a corporation, confirmation of the total preferred and common shares authorized, issued and outstanding by class or series together with any convertible instruments; in instances where unaudited statements are ordinarily prepared, such confirmation to be supplied by the corporate secretary or equivalent of the qualified applicant;
 - (c) full details describing the terms of all warrants, rights, options and like instruments, as well as debt instruments convertible into any form of beneficial equity participation;
 - (d) particulars with respect to the informal equity of the qualified applicant, such as royalty or management agreements etc;

- (e) the detailed Canadian ownership rate calculation and supporting documentation;
 - (f) particulars supporting the determination of control status; and,
 - (g) in the case of an individual, a statement of:
 - (i) citizenship and residency, or
 - (ii) status under the Immigration Act.
- (2) Where the qualified applicant is a small business, an application for a certificate shall be submitted by sending to the PMA a completed summary application including information, such as:
- (a) audited financial statements as of its latest fiscal year end or financial statements conforming with generally accepted accounting principles;
 - (b) particulars supporting the determination of Canadian control;
 - (c) particulars demonstrating that at least 50% of the outstanding shares are registered with investors having Canadian addresses; and
 - (d) if a public corporation, a statement from a duly authorized officer of the corporation stating that the shares are not listed for trading elsewhere than in Canada.

- (3) All information submitted to the PMA, except for information relating to the COR of an investor determined in that calendar year (see section 10 on page 29), in support of an application must be valid as of a date not earlier than 120 days prior to the date forwarded to the PMA and must be accompanied by a statement of a duly authorized officer or representative of the qualified applicant indicating that there has been no material event during this 120-day period which would significantly affect the accuracy of the information submitted.
- (4) Forthwith on receipt of a complete application, the PMA shall send by registered mail to the applicant an acknowledgement as to the date of receipt of the application.
- (5) Where the application is incomplete, the PMA will so notify the applicant.

29. Retention of Documents by the Applicant

The qualified applicant will be required to retain documentation in support of the measurement of its Canadian ownership rate and determination of its control status for six years from the date the PMA receives the application for a certificate unless written permission for its disposal is obtained from the PMA.

30. Audit

(1) At any time after the issuance of a certificate, the PMA may conduct such audits as it deems necessary to ensure that the information contained in any application along with the supporting documentation was accurate, prepared with reasonable diligence and attention and that best efforts were used to obtain all relevant information.

(2) The PMA may also conduct special investigations with respect to information submitted in support of an application for a certificate at any time prior to the issuance of the certificate.

31. Solemn Declaration

Certain information, to be prescribed by regulation, must be submitted under solemn declaration in the manner set out in section 38 of the Canada Evidence Act.

32. Confidentiality

(1) All information obtained by the PMA in the course of the administration of its mandate is privileged and cannot be disclosed to any person not legally entitled thereto without the written consent of the person to whom the information relates, except

(a) in any legal proceeding relating to the administration or enforcement of the PMA's mandate; or

- (b) to a Minister of the Crown in right of Canada or to an officer or employee of Her Majesty in right thereof for any purpose relating to the administration of the PMA's mandate, or
 - (c) to the Minister of Energy, Mines and Resources or any employee or officer of the Department of Energy, Mines and Resources; or
 - (d) in the form of aggregate statistical data; or
 - (e) in the form of identifying the Canadian ownership rate and control status of qualified applicants.
- (2) Notwithstanding the above, under no circumstances will a Minister of the Crown or officer or employee of the Crown be required to give evidence relating to privileged information obtained by the PMA in connection with any legal proceeding other than those relating to the administration or enforcement of the PMA's mandate.

33. Anti-Avoidance

Where the Minister has reasonable grounds to believe that a qualified applicant has entered into an arrangement with any person, or has participated, directly or indirectly, in any transaction in order to circumvent the purpose and intent of the rules respecting the measurement of Canadian ownership rates or the determination of control, he may attribute to a qualified applicant the Canadian ownership rate or control status that, in his opinion, would have otherwise prevailed in the absence of such arrangements or transactions.

34. Ministerial Discretion

Where it can be clearly established that the application of the rules respecting the measurement of Canadian ownership rates or the determination of control produce a result which is manifestly unjust and inequitable, a qualified applicant may apply to the Minister to modify what would otherwise be an unintended effect, and the Minister, in his sole discretion, can either reject the application with or without reason or modify the result as he sees fit.

35. Penalties

Appropriate penalties will be provided for filing information that the applicant knows or could reasonably be expected to know is false or misleading.

SCHEDULE A

FORWARD EQUITY

This schedule sets out the general approach that will be taken in determining whether so-called "forward equity" is to be considered "formal equity" for COR measurement purposes. Forward equity includes various types of financial instruments that may be converted into common shares.

Under certain circumstances, forward equity will be considered as formal equity and may raise or lower the COR of an applicant. These circumstances are described below.

I. CORPORATIONS

The issuance of convertible securities is a well accepted form of financing and may be used by some companies to facilitate its financing process. Forward equity of this type will be considered as formal equity where the facts suggest that there is a reasonable chance that the securities will be converted into common shares within a specified time frame.

1. Upward Impact of Convertible Preferred Shares and Convertible Debt on COR

Forward equity in the form of convertible preferred shares and convertible debt (where registered) is to be considered as formal equity and shall be used to increase the COR of an applicant (or investor) subject to the provision that the maximum increase in COR that will be allowed as a result of the issue of formal equity is 10 percentage points and subject to the conditions below:

(1) The forward equity is sold on an arm's length basis, and the underlying common shares are publicly traded.

(2) The maximum conversion price is not more than 20% above the mid-market price of the common shares, as quoted on a recognized Canadian stock exchange. The mid-market price will be determined as follows:

(a) In the case of an issue where a final prospectus is available, the mid-market price will be the mean between the bid and the ask as quoted on a recognized Canadian stock exchange at the close of trading on the day of signing such a prospectus. The price is to be certified by the applicant, its underwriter and legal counsel. The PMA will require a copy of the final prospectus to be filed with it, no later than 60 days after its issuance.

(b) In the case of an issue where no public prospectus is available, the mid-market price will be the mean between the bid and the ask as quoted on a recognized Canadian stock exchange at the close of trading on the day prior to a formal closing. The price is to be certified by the applicant, its underwriter and legal counsel. The PMA will require a copy of any offering memorandum or other documentation utilized during the distribution of the securities. In addition, it will require a copy of the final agreements between the issuer and the purchasers. All such documents shall be filed with the PMA no later than 60 days after the formal closing.

- (c) In the case where the common shares are not listed on a recognized stock exchange but are traded over the counter, published lists are available of daily volume of trading from one or all of the following bodies:

In Vancouver: The Vancouver Stock Exchange

In Calgary: The Alberta Stock Exchange

In Toronto: The Investment Dealers' Association of Canada

In Montreal: The Montreal Stock Exchange

- (d) The applicant may select from the above list the location where its stock is most actively traded. The market price in this case will be the average of the closing price on the last 30 business days that the stock traded unless there is evidence that the price determined in this way does not reflect actual market value. In any case, where this method is used, the applicant will be required to obtain from its underwriter and legal counsel, a statement that, to the best of their knowledge, there is no evidence that the market value so determined is an unreasonable one.

- (3) The time period within which the convertible securities will be taken into account for COR measurement purposes will be five years from date of issue. For greater clarity it should be noted that securities issued prior to October 29, 1980 are to be measured from the date of their initial issue. As such, there is no grandfathering provision in respect of this section.

(4) The time period in (3) will be measured from the delivery date of the securities sold, as certified by the applicant's underwriter, legal counsel and auditors.*

(5) In the event that the common shares of an applicant should fall in price during the five-year measurement period, the convertibles already issued would be removed from the COR measurement in the following circumstances.

(a) The applicant would determine the weighted average price of all the outstanding common shares traded on a recognized Canadian stock exchange in the 12 months prior to the date of its initial COR application or any subsequent COR application.

(b) Where the shares are traded over the counter, the applicant will have to avail itself of the published lists obtained in 2(c) above. The weighted average price of all the shares listed as trades would be determined. Subsequently, this price is to be utilized in a similar fashion as where common shares are traded on a recognized stock exchange.

* In the case of convertible debt, the aggregate of securities issued in bearer form would not normally be included in the calculation of forward equity for purposes of raising the COR. However, if the beneficial ownership of such a security can be formally certified as being Canadian it may be included in the calculation.

- (c) If the convertible price exceeds the weighted average price of the common shares, as determined in (a) and (b) above, by 20%, at the time of the measurement period, the securities would no longer be included in the COR measurement (subject to (d) below).
- (d) To recognize the possibility of fluctuations in the stock market, convertible securities may be included in an annual COR calculation where the conditions of (c) have been breached, but such an inclusion may occur only once in the five-year period, and only if the premium does not exceed 30% in that one year.
- (e) If, as described in (c), securities are excluded from the COR measurement, but at the next COR measurement period the conversion price has returned to a premium of 20% or less over the weighted average price of the common shares for the period just ended, the securities would again be included in the COR measurement.

The above describes the circumstances under which forward equity will normally be included in a COR calculation where the impact on COR is upward. In addition, where an applicant has issued forward equity, and that issue does not meet the conditions set out above (e.g. more than five years has elapsed since the date of issue), the applicant may present a factual argument that the forward equity should be included in the COR measurement if there is a high probability of an early conversion and the PMA will have the authority to consider the case on its merits.

Consideration has been given to including warrants, rights and options in formal equity where they would have an upward impact on COR. However, for the present, no practical way has been found to do so. Further consideration will be given to this matter in the period ahead.

2. Downward impact of convertible preferred shares and convertible debt on COR

Forward equity in the form of convertible preferred shares and convertible debt is to be considered as formal equity and will be used to decrease the COR of an applicant (or investor) under conditions that essentially parallel those listed under 1. above. In summary, the key points are:

- (1) the maximum conversion price is not more than 20% above the mid-market price of the common shares;
- (2) the convertible securities were issued not more than five years prior to the date of the COR application; and,
- (3) if the common share should fall in price during the five-year measurement period, the convertibles would normally be removed from the COR measurement under the circumstances described under 1(5) (pages 58 and 59) above.

That is, in the above circumstances, the convertible securities will automatically be included in the COR calculation.

In addition, convertible securities that do not meet the conditions specified immediately above, and which would have a downward impact on COR, will also be taken into account for COR measurement unless the applicant (or investor) can show good reason why they ought not to be taken into account. A situation in which an applicant might reasonably argue that convertible securities should not be taken into account would be one where the period remaining for conversion is relatively short and the premium relatively high. The PMA will have the authority to consider such cases on their individual merits.

3. Warrants, Rights and Options

Forward equity in the form of warrants, rights and options will be considered as formal equity where they would have a downward impact on COR as follows.

Such forward equity will automatically be taken into account where

- (1) the exercise price is not more than 20% above the mid-market price of the common shares; and
- (2) there is at least 5 years remaining in the exercise privilege.

In all other circumstances, the warrants, rights and options will be taken into account unless the applicant (or investor) can provide a reasonable case why they should not. The PMA will have the authority to consider cases on their individual merits.

II. FLOW-THROUGH SHARE CORPORATIONS

When an applicant is a flow-through share corporation, as defined, the forward equity that is used in that type of corporation will be taken into account in measuring the COR of that corporation.

III. PARTNERSHIPS AND TRUST

Where the provisions of a partnership or trust agreement provide that the Canadian partners or beneficiaries are entitled to a higher proportion of equity in the future, than at the time of application, the partnership or trust may submit arguments to show that this forward equity should be included in the COR calculation. If there is a high probability that the beneficial ownership of Canadians in that partnership or trust will be raised, then the PMA may accept that the forward equity will be taken into account for the COR calculation.

Where the provisions of a partnership or trust agreement provide that the foreign partners or beneficiaries are entitled to a higher proportion of equity in the future, than at the time of application, the formal equity will be presumed to have been issued, unless the applicant can show, to the satisfaction of the PMA, that there is a low probability that the forward equity will be exercised or converted.

SCHEDULE B

SPECIAL STATUS CORPORATIONS *

1. Alberta Energy Company Limited
2. British Columbia Resources Investment Corporation
3. Canada Development Corporation

* Any other similar corporation may apply to the PMA to be included in this schedule.

SCHEDULE C

PROVISIONS RELATING TO LIFE AND ANNUITY BUSINESS

This schedule sets out the COR rules applicable to life insurance companies operating in Canada. The rules referred to here apply only to the assets administered by life insurance companies which are held in respect of the general fund (life and annuity business). Separate rules apply to the treatment of pension funds or pooled funds that are administered or operated by life insurance companies.

A Canadian incorporated life insurance company which enters actively into the exploration for and/or development of oil and gas in Canada, and which wishes to benefit directly from the National Energy Program, will be required to submit an application for a COR certificate to the PMA. Where firms in the life insurance business wish to invest in firms that are applicants for COR certificates, they are not required to make a separate application to the PMA, but are subject to audit.

For the purposes of COR determination, eight categories of companies have been established.

(1) This section pertains to the following category of companies:

Category 1 This includes two types of companies;

(a) Canadian controlled mutual companies with domestic operations only, and

(b) Canadian controlled joint stock companies, with domestic operations only, which are at least 90% beneficially owned by Canadians.

Policies and annuity contracts written in Canada will be deemed to be Canadian if the company certifies that, to the best of its knowledge, not more than 5% by value, of the policies and contracts covered by the general fund (life and annuity business) are held by non-Canadians. A 100 % COR shall apply to such a company both as an applicant and as an investor in an applicant.

(2) This section pertains to the following two categories of companies:

Category 2 Canadian controlled mutual companies, with international operations; and

Category 3 Canadian controlled joint stock companies with;

(a) international operations, or

(b) foreign ownership in excess of 10% but less than
50%, or

(c) both (a) and (b).

(i) A 100% COR shall apply to a company in these categories in respect of assets held for the general fund (life and annuity business), provided that the company undertakes to demonstrate to the satisfaction of the PMA that the full amount of any income or capital gains net of losses on any Canadian oil and gas investments (hereinafter defined), will accrue only to the benefit of holders of Canadian policies or annuity contracts. Policies and contracts written in Canada will be deemed to be Canadian if the company certifies that, to the best of its knowledge, not more than 5% by value, of the policies and contracts covered by the general fund (life and annuity business) are held by non-Canadians.

The undertaking to allocate investment income from Canadian oil and gas investments to holders of Canadian policies and annuity contracts must not have any influence on the allocation of the residual income arising from other investments. That is, the residual income from all investments other than Canadian oil and gas investments is to be allocated using the same type of formula, whatever it might be, that the company has adopted traditionally for the allocation of investment income.

Example of flow of income with undertaking

Total income.....\$1000

of which Canadian oil and gas investment income is \$50.

If Canadian business is 60% of total world business and income is traditionally similarly apportioned, then Canadian policyholders would receive \$570 (60% of \$950) plus the \$50. Therefore total income allocated to Canadians would be \$620 (\$570 + \$50) including all income arising from Canadian oil and gas investments.

The method of allocating the residual investment income of companies that apply for a 100% COR, covering assets held in respect of the general fund (life and annuity business), must be described in the annual statements required by the relevant Department of Insurance (i.e. federal or provincial). Compliance with the reported allocation methodology will be subject to periodic verification by relevant Department of Insurance examiners. In addition, a copy of such an undertaking must be filed with both the PMA and the relevant Department of Insurance.

(ii) The definition of Canadian oil and gas investments for the purposes of this undertaking includes:

(a) Property that is:

- any right, licence or privilege to explore for, drill for, take or store underground petroleum, natural gas or other related hydrocarbons in Canada,
- any oil or gas well situated in Canada,
- any rental or royalty computed by reference to the amount or value of production from an oil or gas well situated in Canada, and

- any right to or interest in any property described in any of the above three types of investments including a right to receive proceeds of disposition in respect of a disposition thereof, held directly, or through an interest in a partnership, a drilling for shares arrangement, or a subsidiary company which qualifies as a joint exploration company; and

(b) any interest in a Canadian company a principal business of which is the exploration, development, production, distribution, or any combination thereof, of petroleum and natural gas, the COR of which has been established at 50% or more.

(iii) A Canadian controlled mutual company (Category 2) that chooses not to provide an undertaking will have a COR equal to:

Canadian Policyholder and Annuity Liabilities
World Policyholder and Annuity Liabilities

(iv) A Canadian controlled joint stock company (Category 3) that chooses not to provide an undertaking will have a COR equal to the lower of:

Canadian Policyholder and Annuity Liabilities
World Policyholder and Annuity Liabilities

or

the COR derived from the basic methodology set out in the main body of the document (see page 20).

(v) The COR shall apply to these companies both as an applicant and as an investor in an applicant.

(3) This section pertains to the following category:

Category 4 Branches in Canada of foreign controlled mutuals.

(i) A 100 % COR shall apply in respect of assets vested in trust for the general fund (life and annuity business), subject to the undertaking and reporting provisions identical to those prescribed for categories 2 and 3 above (paragraphs 2(i) and 2(ii) of this schedule), and provided a minimum of 90% of the Canadian business is in the form of participating insurance and annuity contracts.

(ii) Companies that choose not to provide an undertaking, or that do not meet the 90% participating business requirement, will have a COR equal to:

Canadian Policyholder and Annuity Liabilities
World Policyholder and Annuity Liabilities

(iii) The COR shall apply to those branches only as investors in applicants and not as applicants. (The reason is that branches are not qualified applicants.)

(4) This section pertains to the following remaining categories:

Category 5 Canadian joint stock companies, with participating policyholders or annuitants, which are foreign controlled;

Category 6 Branches in Canada of foreign controlled joint stock companies, with participating policyholders or annuitants;

Category 7 Canadian joint stock companies, without participating policyholders or annuitants, which are foreign controlled; and

Category 8 Branches in Canada of foreign controlled joint stock companies, without participating policyholders or annuitants.

(i) The COR of category 5 companies is the greater of the COR as measured by the basic methodology set out in the main body of this document (see page 20) or the formula set out below.

$$\text{COR} = 1 - \frac{\frac{\text{(Canadian Participating Liabilities)}}{\text{Total Canadian Policyholder and Annuity Liabilities}} + 100\% \frac{\text{(Canadian Non-Participating Liabilities)}}{\text{Total Canadian Policyholder and Annuity Liabilities}}}{1}$$

where $X\%$ is the proportion of income earned in respect of Canadian participating policyholders and annuitants that is paid out to shareholders, and fixed by virtue of being stated in the company's articles of association or in the statutes governing it, and confirmed by an undertaking to the PMA and the relevant Department of Insurance.

For Category 6 the COR is to be derived using the formula immediately above only. For Category 7 companies, the COR is derived from the basic system set out in the main body of the document (see page 20). For Category 8, the COR will always equal zero, using the basic system or the formula.

An example of a COR for a joint stock company wholly owned abroad with \$500 participating and \$500 non-participating Canadian business is shown below. This company has provided a guarantee to the PMA that 90% of the residual income earned in respect of Canadian participating policy holders will be distributed or reserved for distribution to Canadian participating policy holders. Therefore, in this case a maximum of 10% of such income will accrue to the foreign shareholders, as well as 100% of residual income earned in respect of Canadian non-participating policyholders.

$$\begin{aligned}\text{COR} &= 1 - \frac{10\% (500) + 100\% (500)}{(1000)} \\ &= 1 - \frac{(50 + 500)}{(1000)} \\ &= 1 - \frac{550}{1000} \\ &= .45 \text{ or } 45\%\end{aligned}$$

(ii) The COR shall apply to companies in categories 5 and 7 both as applicants and investors in applicants (but, of course, they are not Canadian controlled). With respect to category 6, the COR applies to the branch as an investor only.

SCHEDULE D

DETERMINATION OF MARKET VALUE

1. Public Corporations

On page 18 a 'small holding' is defined as "any holding with a Canadian address of a public corporation having less than \$50,000 in market value ...". Such small holdings will be deemed to have a COR of 100%.

For the purposes of establishing the market value, the following procedures will be followed:

(1) When the applicant has decided on the timing of its initial COR application, it must select a date no more than 120 days prior to its application, and the selected date will be the determinant date in establishing the market value. In addition,

(a) in the case where the common shares are traded on a recognized Canadian stock exchange

(i) the market value will be based on the weighted average of all the shares traded for the 30 business days preceding the "determinant date". Where shares are traded on more than one recognized stock exchange, it will only be necessary to select the exchange where the largest volume of the applicant's shares have traded;

(ii) having determined the weighted average, that price will be the market value. The applicant will then divide \$50,000 by the market value. The resulting amount of shares, rounded to the closest 5 shares, will be the applicable small holding for that particular COR measurement period.

(iii) The amount of shares determined in (ii) above will remain as a small holding until the next COR measurement. If for any reason a new COR measurement should be necessary prior to twelve months after the "determinant date", the same procedure would apply. As such, the market value would have to be set on each occasion when a new COR measurement is undertaken.

(b) In the case where common shares are traded over the counter, published lists are available of daily volume of trading from one or all of the following bodies:

In Vancouver: The Vancouver Stock Exchange

In Calgary: The Alberta Stock Exchange

In Toronto: The Investment Dealers' Association of Canada

In Montreal: The Montreal Stock Exchange

The applicant should use the list where the largest volume of shares has traded in the 30 business days prior to the "determinant date". From that point on, the same procedure would apply as in (a) above.

(c) The qualified applicant is to include in its application the specified data used in its "market value" calculation.

(2) Where an investor in an applicant is calculating its COR, the same provisions will apply in determining the market value of a small holding.

2. Pooled Funds Administered by a Prescribed Institution

A small holding of a pooled fund operated or managed by a prescribed institution is a holding in that fund with a market value of \$50,000 or less. To establish the market value of such funds, the applicant or the investor, depending on the circumstances, would require a certificate, duly signed, from the specific institution operating or managing the fund. The certificate will specify the mid-point between the price at which the institution would have redeemed one unit of the fund and the price at which the institution would have sold one new unit. If that information is not specifically available on a COR measurement date, the institution will indicate the date on which it had last made a formal calculation for the redemption or offer of its units, and the mid-price of that calculation will be the market value for determining the shares or number of units that constitute a small holding.

The applicant or investor would then divide \$50,000 by the market value; the resulting amount of shares or units will be the applicable small holding for that particular COR measurement period. The process would be repeated on each occasion when a new COR measurement is made.

3. Partnerships and Trusts

As there is no standard way of measuring the market value of holdings in partnerships and trusts, individual applicants that wish to avail themselves of the \$50,000 small holding provision will have to demonstrate that the method they use in determining market value is appropriate to the circumstances.

4. Acceptance by the PMA of the representations of a qualified applicant respecting market value will be solely for the purpose of determining the COR of the qualified applicant and is relevant for that purpose only.

SCHEDULE E

BASIC SYSTEM ALTERNATIVE

Small Holdings Not Utilized

The example below follows the process set out in Calculation Methodology - Basic System (see page 20).

The example departs from the basic system in that it assumes the qualified applicant does not determine its small holdings. The facts pertinent to the calculation are;

$T = 1,000,000$ units (total of the class outstanding)

$F = 50,000$ units (holdings with foreign addresses)

$S = 0$ (the qualified applicant does not avail itself of the small holdings relieving provision)

$P = T - (F + S)$

$= 1,000,000 - (50,000 + 0) = 950,000$ units (pool of remaining Canadian addresses)

$A = 50\%$ of P including all holdings of one half of 1% or more (measured holdings)

50% of $P = 475,000$ units

Thus the qualified applicant will have to measure at least 475,000 units in the example.

A = The actual number of holdings the applicant measures.

| <u>Holding</u> | <u>Number of Units</u> |
|--------------------------------|------------------------|
| Corporation "X" | 200,000 |
| Pension fund "K" | 160,000 |
| Corporation "H" | 80,000 |
| Individual "Y" | <u>20,000</u> |
| | 460,000* |
| Trust company equity fund "E"* | 4,500 |
| Corporation "C" | 4,000 |
| Individual "F" | 4,000 |
| Individual "G" | <u>4,000</u> |
| | <u>476,500</u> |
| | "A" |

* As the large holdings do not aggregate 475,000 units, additional holdings must be selected in descending order of magnitude and then measured.

R = remaining units (holdings not selected for measurement)

$$R = P - A$$

$$= 950,000 - 476,500$$

$$= 473,500 \text{ units}$$

The measurement process to determine the beneficial Canadian ownership "B" from the aggregate of each of the units identified for measurement is then begun.

| Holder | Number of units | | COR of holdings | Beneficial Canadian ownership |
|----------------------------------|--------------------|---|--------------------|----------------------------------|
| Corporation "X" | 200,000 | x | 0.75 | 150,000 |
| Pension fund "K" | 160,000 | x | 1.00 | 160,000 |
| Corporation "H" | 80,000 | x | 0.60 | 48,000 |
| Individual "Y" | 20,000 | x | 1.00 | 20,000 |
| Trust company equity fund "E" | 4,500 | x | 1.00 | 4,500 |
| Corporation "C" | 4,000 | x | 0.00 | - |
| Individual "F" | 4,000 | x | 0.00 | - |
| Individual "G" | 4,000 | x | 1.00 | 4,000 |
| | <u>476,500</u> | | | <u>386,500</u> |
| | "A" | | | "B" |

The COR of the applicant would be

$$COR = \frac{B + (B/A \times R) + S}{T}$$

$$= \frac{386,500 + (386,500 \times 473,500) + 0}{476,500}$$

$$= \frac{1,000,000}{1,000,000}$$

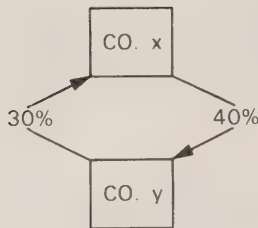
$$= 77.1\%$$

$$= 77\%$$

SCHEDULE F

RECIPROCAL SHAREHOLDINGS

Example of Basic Approach



| | HOLDINGS | | | Total |
|-------|-----------------|----------|---------|-------|
| | Inter-corporate | Canadian | Foreign | |
| CO. x | 30 | 60 | 10 | 100 |
| CO. y | 40 | 35 | 25 | 100 |

Applicant

$$\text{COR} = \frac{B + (B/A \times R) + S}{T}$$

- assume no small holdings (i.e., $S = 0$)

- assume all holdings are measured (i.e., $B/A \times R = 0$)

Then

1. $X = \text{COR of Co. X}$
 $Y = \text{COR of Co. Y, and}$

$$\begin{aligned} 2. \quad X &= \frac{60}{100} + .3Y \\ &= .6 + .3Y \quad \dots (1) \end{aligned}$$

$$\begin{aligned} Y &= \frac{35}{100} + .4X \\ &= .35 + .4X \quad \dots (2) \end{aligned}$$

3. to solve for COR of X
 substitute (2) into (1) above.

$$\begin{aligned} X &= .6 + .3 (.35 + .4X) \\ X &= .6 + .105 + .12X \\ .88X &= .705 \\ \text{COR X} &= 80.1 = 30\% \end{aligned}$$

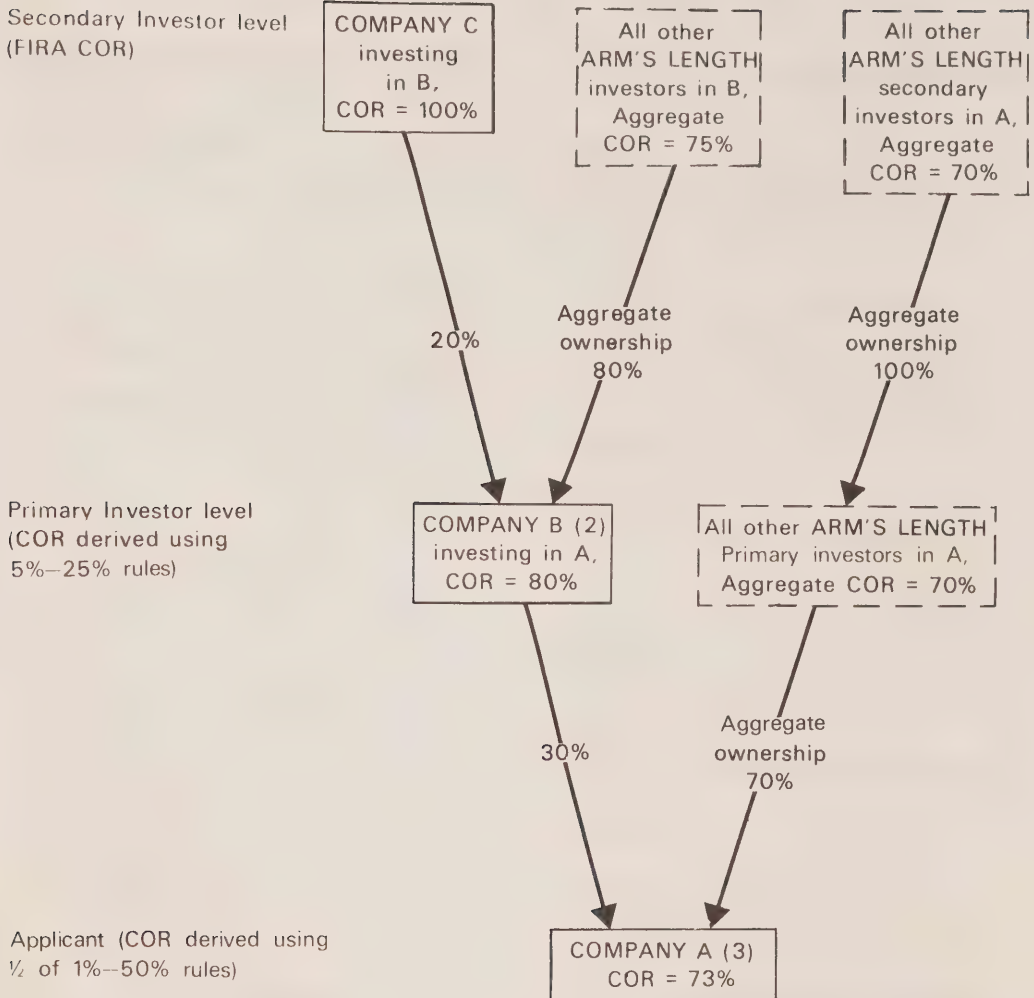
4. to solve for COR of Y
 substitute COR X into (2) above.

$$\begin{aligned} Y &= .35 + .4 (.801) \\ \text{COR Y} &= 67.0\% = 67\% \end{aligned}$$

Note: Where reciprocal shareholdings occur, the above methodology is suggested. The process consists of substituting the appropriate holdings into the COR formula and solving algebraically for two simultaneous equations. This general approach may be applied to any number of reciprocal relationships.

SCHEDULE G

ARM'S LENGTH CHAIN (1)



Notes to Schedule C

- (1) Companies A, B and C are examples of companies at each level of the arm's length ownership structure of A.
- (2) The COR of B was arrived at by multiplying the ownership of C in B by the COR of C, and adding to this product the aggregate product of the CORs of all other arm's length investors in B multiplied by each of their ownership interests in B.
- (3) The COR of A was arrived at using the same principles as were used to derive the COR of B, except that it reflects the aggregate of each of the ownership interests of primary investors in A multiplied by their individual CORs.

SCHEDULE H

ARM'S LENGTH AND NON-ARM'S LENGTH CHAIN (example 1)

RELEVANT FACTS

DIRECTIONS FOR MEASUREMENT OF COR

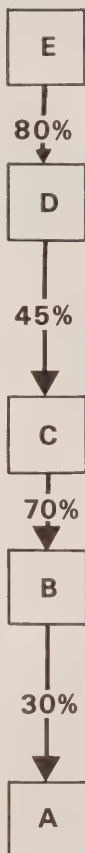
E is the last member in a non-arm's length chain.

D is 80% owned by E and is therefore in a non-arm's length relationship with E.

C is 45% owned by D and is therefore in an arm's length relationship with D

B is 70% owned by C and is therefore in a non-arm's length relationship with C.

Applicant is 30% owned by B and is therefore in an arm's length relationship with B.



- E is measured in accordance with the 1/2 of 1%/50% basic system.

- D is measured by multiplying the COR of E by 80% and adding to the product the beneficial Canadian ownership of the remaining 20% ownership interest in D, which is measured using the 5%/25% basic system.

- C's COR is measured in accordance with the 1/2 of 1%/50% basic system and includes the COR of D's 45% interest in C.

- B's COR is measured by multiplying the COR of C by 70% and adding to the product the beneficial Canadian ownership of the remaining 30% ownership interest in B, which is measured using the 5%/25% basic system.

- A's COR is measured in accordance with the 1/2 of 1%/50% basic system and includes the COR of B's 30% interest in A.

Note: For an explanation of the '1/2 of 1%/50%' basic system and the '5%/25%' basic system, see pages 20-27.

SCHEDULE I

NON-ARM'S LENGTH CHAIN (example 2) Relationship With Arm's Length Chain

RELEVANT FACTS

DIRECTIONS FOR MEASUREMENT OF COR

F is an individual or corporation.

E has a FIRA COR.

D is 10% owned by E and is therefore in an arm's length relationship with E. It is treated as if it were a primary investor in C.

C is 30% owned by D and is therefore in an arm's length relationship with D.

B is 60% owned by C and is therefore in a non-arm's length relationship with C.

Applicant is 60% owned by B and is therefore in a non-arm's length relationship with B.



- F does not need to do a COR since it is more than two levels beyond the beginning of the arm's length chain, which starts at C.

- E applies FIRA control test.
(ie. E's COR is 100%)

- D's COR is measured using 5%/25% basic system and includes the COR of E's 10% interest in D.

- C's COR is measured using the 1/2 of 1%/50% basic system and includes the COR of D's 30% interest in C.

- B's COR is measured by multiplying the COR of C by 60% and adding to the product the beneficial Canadian ownership of the remaining 40% ownership interest in B, which is measured using the 1/2 of 1%/50% basic system.

- A's COR is measured by multiplying the COR of B by 60% and adding to the product the beneficial Canadian ownership of the remaining 40% ownership interest in A, which is measured using the 1/2 of 1%/50% basic system.

SCHEDULE J

UNIDENTIFIED STREET SHARES

The following situations illustrate the process of integrating unidentified street shares into the COR formula (see 13 on page 35). In each situation below the identifiable holdings are assumed to be the same.

Situation 1.

The unidentified street shares represent less than 5% of the total shares outstanding in the class.

Facts:

| | | | | | |
|---|---|---------------------------------------|---|-----------|--------|
| T | = | total of class | = | 1,000,000 | shares |
| F | = | foreign | = | 100,000 | shares |
| S | = | small | = | 200,000 | shares |
| U | = | unidentified street shares | = | 40,000 | shares |
| A | = | holdings selected for measurement | = | 350,500 | shares |
| B | = | Canadian content of A | = | 288,050 | shares |
| R | = | holdings not selected for measurement | | | |
| | | and unidentified street shares | = | 349,500 | shares |

Calculation

$$\begin{aligned}\text{COR} &= \frac{B + (B/A \times (R - U)) + S}{T - U} \\ &= \frac{288,050 + \frac{(288,050 \times (349,500 - 40,000))}{350,500} + 200,000}{1,000,000 - 40,000} \\ &= 77.3\% \\ \text{COR} &= 77\%\end{aligned}$$

Situation 2.

Same facts as in Situation 1, except that U (the unidentified street shares) aggregate in excess of 20%; specifically 25% of the total of the 1,000,000 shares outstanding, or 250,000 shares.

Calculation

$$\begin{aligned}\text{COR} &= \frac{B + (B/A \times (R - U)) + S + (.50 \times U)}{T - U} \\ &= \frac{288,050 + \frac{(288,050 \times (349,500 - 250,000))}{350,500} + 200,000 + (0.50 \times 150,000)}{1,000,000 - 50,000 * } \\ &= 67.8\% \\ \text{COR} &= 68\%\end{aligned}$$

NOTE: The following steps are assumed to have taken place respecting the 250,000 street shares.

- (a)* 50,000 shares are deducted from both R and T
- (b) 150,000 shares are deducted from R and given a deemed COR of 50%
- (c) the remaining 50,000 shares are deducted from R and given a deemed COR of 0% since the special rules in respect of street shares apply up to a maximum of 20% of the class of shares outstanding

250,000 = Total deducted from R (above)

Situation 3.

Same facts as in Situation 1 except that U (the unidentified street shares) equal 15% of the total of the class of shares outstanding (i.e. U = 150,000 shares).

Calculation

$$\begin{aligned}\text{COR} &= \frac{B + (B/A \times (R - U)) + S + (.50 \times U)}{T - U} \\ &= \frac{288,050 + \frac{(288,050 \times (349,500 - 150,000))}{350,500} + 200,000 + (0.50 \times 100,000)}{1,000,000 - 50,000} \\ &= 73.9\% \\ \text{COR} &= 74\%\end{aligned}$$

NOTE: The following steps are assumed to have taken place respecting U.

1. The 150,000 shares do not exceed 20% of T for this qualified applicant (200,000 shares). Therefore the following rules apply.
 - (a) 50,000 shares are deducted from R and T
 - (b) 100,000 shares are deducted from R and given a deemed COR of 50%
150,000 = total deducted from R (above)

SCHEDULE K

DEFINED BENEFIT AND DEFINED CONTRIBUTION PENSION PLANS

This schedule relates to the method of COR determination for defined benefit and defined contribution pension plans that do not meet the provisions required for 100% COR (see 2 (3) and (4) on pages 10-11).

For defined benefit and defined contribution pension plans in which less than 90% of participants have Canadian addresses, but in which there are 50 members or more;

$$\text{COR} = \frac{\text{Plan Members With Canadian Addresses}}{\text{Total Plan Membership}}$$

For defined benefit pension plans that have less than 50 members;

$$\text{COR} = \frac{\text{Pension Plan Liabilities to Canadian Citizens Ordinarily Resident in Canada}}{\text{Total Pension Plan Liabilities to All Plan Members}}$$

SCHEDULE L

REGISTERED TRADERS AND MARKET MAKERS

1. Common shares held by an investment dealer in its capacity as a registered trader or market maker will be deemed to be Canadian for COR measurement purposes, subject to 2 to 5 below.

2. The investment dealer will have to provide from the relevant stock exchange a certificate that he is a recognized registered trader or market maker in the applicant's common shares.

3. In no event may the aggregate of the applicant's shares which are deemed to be Canadian, exceed .5 of 1% of the common shares thus outstanding; any amount held in excess of .5 of 1% will be measured by applying the COR of the investment dealer, or dealers, to the holding or holdings.

4. For clarification, it should be noted that this deeming provision only applies where the investment dealer acts as a registered trader or market maker in an applicant's applicable securities; the fact that he may act as a registered trader or market maker in other securities has no bearing for this particular application.

5. These rules apply only to the measurement of a qualified applicant's COR and in no way affects provincial securities legislation.

